IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 5552 OF 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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GUJARAT WATER SUPPLY AND SEWERAGE BOARD - Petitioner(s)

Versus

ARVIND POONABHAI DANGAR - Respondent(s)

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Appearance :
Shri Mehul H. Rathod for Petitioner(s).
Shri Jagdish H. Mehta for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 28/06/2007

ORAL JUDGMENT

The petitioner-employer, being aggrieved by the award dated 6th March, 1999 passed by the learned Presiding Officer, Labour

Court, Junagadh in Reference (LCJ) No.1727 of 1990, is before this Court with a submission that the reference could not be decided in favour of the respondent, worker-cum-employee in view of his own admission that he was not ready and willing to work on the post of helper and would work and assume the duties only if he is offered the post of Junior Clerk.

2. The short facts necessary for disposal of the Writ Application are that the respondent was employed as a Junior Clerk on *ad hoc/*temporary basis somewhere in September-1986. In May, June and July-1987, he was asked to work as a Clerk-cum-Typist. Thereafter, in March-1988, he was asked to work as a Helper. Thereafter, again as a Clerk and thereafter, in August-1988, he was asked to work as a Helper. In October and November-1988, he worked as a peon and thereafter, right from December-1988 to April-1990, before he left coming to the services, he worked as a Helper. Immediately after he absented himself, he was issued a notice on 6th April, 1990 that he was required to attend to the work. The respondent-workman, however, did not report to the duty, but, sent a communication to the employer that he was wrongly given the work of Helper though his initial appointment was that of the Clerk. Thereafter, the respondent asked for a reference, which was accordingly made.

2.1 The parties submitted their claims and written statements and thereafter, led evidence and also produced the documentary evidence. After hearing the parties, the learned Labour Court allowed the reference in favour of the labour with a direction that within a period of 30 days from the date of publication of the award, the workman be reinstated at his original/basic place; the award for full back-wages was also made in favour of the workman.

3. Shri M.H. Rathod, learned Counsel for the petitioner, submits that from the communication sent by the workman and his statements before the learned Labour Court, that he was not ready to join as Helper, the learned Labour Court could not grant any relief to the workman. He also submits that from the statements relating to the allotment of work and nature of the duties assigned to the workman, it does not appear that he was permanently appointed as a Clerk or the employer was engaged in unfair trade practice.

4. Shri Mehta, learned Counsel for the respondent, however, submitted that if from September-1986 to February-1988, the respondent continuously worked as a Clerk, then, the Court must presume that the workman was appointed as a Clerk. He, however, admits that right from September-1988 upto April-1990, the respondent was treated as a Helper and he did not raise the dispute regarding his

degradation, nor ever asked any authority to make a reference to the Labour Court nor ever complained of unfair trade practice.

5. In the cross examination of the respondent-workman, it has clearly come on the record that if the employer was ready and willing to take back the services of the workman as a Helper, then, he was not ready and willing to join. Once the workman refuses to join the duties, on the ground that he is entitled to better and higher post and unless the same is offered to him, he would not join the duties, then, the only presumption or conclusion which the Court can come to is that he has abandoned the work of his own. Even from the terms of the reference, it does not appear that at any time, the workman made complaint to the authorities that the employer was engaged in unfair trade practice or the question of unfair trade practice was required to be decided by the Labour Court.

6. In absence of the complaint that the petitioner was treated unfairly and the action of the employer amounted to unfair trade practice, the learned Labour Court could not direct reinstatement of the workman with full back-wages on the post of the Clerk. The learned Court below was absolutely unjustified in answering the reference in favour of the workman when it has come on the records that he was not ready and willing to join the post, which he was last holding despite an

offer made by the employer to take him.

7. For the reasons aforesaid, the petition deserves to and is, accordingly, allowed. The award passed by the learned Labour Court is hereby quashed and set aside. Rule is made absolute. No costs.

[R.S.Garg, J.]

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